

REMARKS

***Summary of the Amendment***

Upon entry of the above amendment, claims 11-21, 29, 31-37, 42, 44 and 46 will have been canceled, claims 22, 24, 25, 28, 30, 38 and 41 will have been amended, and claims 47-51 will have been added. Accordingly, claims 22-25, 27, 28, 30, 38-41 and 43-51 will be pending with claims 22 and 38 being in independent form and with claims 44 and 46 being withdrawn by the Examiner on the basis of a restriction requirement.

***Summary of the Official Action***

In the instant Office Action, the Examiner re-asserted the basis of the previous restriction requirement, withdrew claims 11-21 and 31-37, and claims 44 and 46, from examination. Moreover, the Examiner made the restriction requirement final. The Examiner finally acknowledged Applicant's claim to foreign priority and indicated that the certified copy of the priority document had been received from the International Bureau. Finally, the Examiner rejected claims 22-25, 27-30, 38-43 and 45 over the art of record. By the present amendment and remarks, Applicant submits that the rejections have been overcome, and respectfully requests reconsideration of the outstanding Office Action and allowance of the present application.

***Present Amendment is proper for entry***

Applicant submits that the instant amendment is proper for entry after final rejection.

Applicant notes that no question of new matter nor are any new issues raised in entering the instant amendment of the claims and that no new search would be required, especially since the Examiner has considered the recited features and because such an amendment would distinguish the invention over the applied documents. Moreover, Applicant submits that the instant amendment places the application in condition for allowance, or at least in better form for appeal. Accordingly, Applicant request that the Examiner enter the instant amendment, consider the merits of the same, and indicate the allowability of the present application and each of the pending claims.

***Interview of July 28, 2005***

Applicant appreciates the courtesy extended by Examiner Merek in the interview of July 28, 2005. In that interview, Applicant's representative discussed, among other things, that the features of claims 29 and 42 were not disclosed or suggested by the applied documents. Applicant's noted, in particular, that these claims recite the two deformation zones shown in Figs. 9, 10 and 25 of the instant application.

In response, the Examiner indicated that he would have to carefully review PRIETO for these features and especially the discussion of Figs. 12 and 13 of PRIETO. The Examiner also indicated that he would likely obtain an English language translation of this document. Additionally, the Examiner suggested that Applicant change the term "zone" to something which is more structural. Finally, the Examiner was unwilling to indicate whether respectfully adding the features of claims 29 and 42 to claims 22 and 38 would render the

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claims allowable over PRIETO, pending further search and consideration of the disclosure of PRIETO.

Accordingly, Applicant has herein, in an effort to advance prosecution, amending claims 22 and 38 as proposed in the Interview and consistent with the Examiner's comments in order to even more clearly distinguish the claims over the applied art of record.

### ***Restriction Requirement***

Claims 11-21, 31-37, 44 and 46 were withdrawn by the Examiner as directed to the non-elected invention. The Examiner also made the restriction final.

Applicant again respectfully disagrees with the basis for the restriction requirement for the reasons already made of record.

Nevertheless, in an effort to advance prosecution of the elected claims, Applicant has canceled non-elected claims 11-21 and 31-37 pending allowance of the elected claims. Applicant also requests that claims 44 and 46 be rejoined if and when claims 22 and 38 are found to be allowed.

### ***Traversal of Rejection Under 35 U.S.C. § 102***

Applicant traverses the rejection of claims 22-25, 27-30, 38-43 and 45 under 35 U.S.C. § 102(b) as being anticipated by EP 0 926 080 to PRIETO.

In the rejection, the Examiner asserted that PRIETO discloses all of the recited

features of these claims, including the elastically deformable retention arm. Applicant respectfully traverses this rejection.

Applicant respectfully submits that this rejection is improper because the Examiner has not shown that PRIETO discloses, or even suggests, inter alia, a straw-supporting member having an elastically deformable retention arm which comprises a free end and at least another end, the straw-supporting member comprising a first elastically deformable structure and a second elastically deformable structure, wherein the first elastically deformable structure enables movement of the retention arm in a first pivoting direction and the second elastically deformable structure enables movement of the retention arm in a second pivoting direction, as recited amended independent claims 22 and 38.

Applicant does not dispute, for example, that Figs. 12 and 13 of PRIETO discloses a straw-supporting member having an elastically deformable retention arm. However, Applicant submits that the Examiner has not demonstrated that PRIETO discloses the straw-supporting member comprising a first elastically deformable structure and a second elastically deformable structure, wherein the first elastically deformable structure enables movement of the retention arm in a first pivoting direction and the second elastically deformable structure enables movement of the retention arm in a second pivoting direction.

Applicant notes that the retention arm shown in Figs. 12 and 13 appears to be elastically deformable via the structure 31b. It is not apparent from Figs. 12 and 13 whether part 31a is elastically mounted to the body 9. Nor is it apparent from Figs. 12 and 13 whether the part 31a moves elastically with respect to the body 9. Applicant notes that the retention arm shown in Figs. 12 and 13 appears to be elastically deformable only via the structure

31b. Finally, Applicant submits that it is not apparent from Figs. 12 and 13 that PRIETO would allow the retention arm 4 to move in both a first pivoting direction and a second pivoting direction.

Thus, Applicant submits that this document lacks any disclosure with regard to at least the above-noted features and the Examiner has not shown otherwise.

For the foregoing reasons and because this document fails to disclose the above-noted features of the instant invention, Applicant submits that this document fails to disclose each and every recited feature of claims 22 and 38. Accordingly, Applicant submits that the Examiner has failed to provide an adequate evidentiary basis to support a rejection of anticipation under 35 U.S.C. § 102(b) and that the instant rejection is improper.

Finally, Applicant submits that claims 23-25, 27, 28, 30, 39-41, 43 and 45 are allowable at least for the reason that these claims depend from an allowable base claim and because these claims recite additional features that further define the present invention. In particular, Applicant submits that no proper characterization or reading of PRIETO discloses, or even suggests: that the straw retaining mechanism comprises a retaining tube portion as recited in claim 23; that the straw-supporting member is made as a single piece as recited in claim 24; that the straw-supporting member comprises an injected plastic material as recited in claim 25; that the deformable lips are adapted to be peripherally sandwiched between a crimping groove and an upper peripheral rim of the container as recited in claim 27; that the straw retaining mechanism further comprises an actuation arm that is adapted to be actuated and displaced during an opening of the

container as recited in claim 28; that the first pivoting direction comprises movement about a vertical pivoting axis, and the second pivoting direction comprises movement about a horizontal pivoting axis as recited in claim 30; that the straw retaining mechanism comprises a retaining tube portion as recited in claim 39; that the body comprises a succession of deformable lips, whereby the deformable lips are adapted to be peripherally sandwiched upon crimping of a cover onto a container as recited in claim 40; that the straw-supporting member further comprises an actuation arm that is adapted to be actuated and displaced during an opening of the container as recited in claim 41; and that the body and the straw supporting member comprise a one-piece plastic member and wherein the body is securable to the container via the cover as recited in claim 43.

Accordingly, Applicant respectfully requests reconsideration and withdrawal of this rejection and further requests that the above noted claims be indicated as allowable.

***New Claims are also Allowable***

Applicant submits that the new claims 47-51 are allowable over the applied art of record. Specifically, claims 47-51 depend from claims 22 or 38 which are believed to be allowable. Moreover, Applicant submits that these new claims recite a combination of features which are not disclosed or suggested by the applied art of record.

Accordingly, Applicant respectfully requests consideration of these claims and further request that the above-noted claims be indicated as being allowable.

CONCLUSION

In view of the foregoing, it is submitted that none of the references of record, either taken alone or in any proper combination thereof, anticipate or render obvious Applicant's invention, as recited in each of the pending claims.

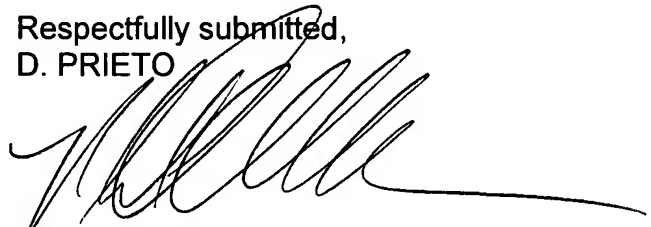
Further, any amendments to the claims which have been made in this response and which have not been specifically noted to overcome a rejection based upon the prior art, should be considered to have been made for a purpose unrelated to patentability, and no estoppel should be deemed to attach thereto.

Accordingly, reconsideration of the outstanding Office Action and allowance of the present application and all the claims therein are respectfully requested and now believed to be appropriate.

Please charge any additional fees necessary for consideration of the papers filed herein and refund excess payments to Deposit Account No. 19-0089.

Should there be any questions, the Examiner is invited to contact the undersigned attorney at the number listed below.

Respectfully submitted,  
D. PRIETO



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